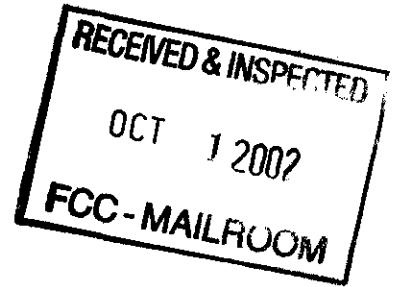


## Federal Communications Commission

DA 02-2320

Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Tignall, Georgia)	)	MB Docket No. 02-288
	)	RM-10525
	)	
(Idaho Falls, Idaho)	)	MB Docket No. 02-289 ✓
	)	RM-10526
	)	
(Manila, Utah)	)	MB Docket No. 02-290
	)	RM-10527
	)	
(Arthur, Nebraska)	)	MB Docket No. 02-291
	)	RM-10528
	)	
(McLean, Texas)	)	MB Docket No. 02-292
	)	RM-10540
	)	
(Wheeler, Texas)	)	MB Docket No. 02-293
	)	RM-10541
	)	
(Opal, Wyoming)	)	MB Docket No. 02-294
	)	RM-10543

## NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 2002

Released: September 27, 2002

Comment Date: November 18, 2002

Reply Comment Date: December 3, 2002

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**MB Docket No. 02-288; RM-10525**

**Petitioner:** Georgia-Carolina Broadcasting Co., LLC

c/o Robert Lewis Thompson, Esq.  
Thiemann, Aitken & Vohra, LLC  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 244A at Tignall, Georgia, as the community's first local aural transmission service.<sup>1</sup>

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Tignall, Georgia	----	244A

**Coordinates:** 33-55-40 NL and 82-48-58 WL

**Additional Information:** This allotment requires a site restriction of 9.8 kilometers (6.1 miles) northwest to avoid a short-spacing to the licensed site of Station WAKB(FM), Channel 245C3, Wrens, Georgia.

**FCC Contact:** Sharon P. McDonald (202) 418-2180

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<sup>1</sup> In support of its proposal, petitioner states that Tignall is an incorporated city with a 2000 U.S. Census population of 653 persons. Tignall is governed by an elected mayor and council. It has its own post office and zip code. Tignall has its own police and fire departments, a library, five churches, its own sewer and water service, and several business establishments.

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**B. MB Docket No. 02-289; RM-10526**

**Petitioner:** Scott D. Parker

c/o Richard A. Helmick, Esq.  
Cohn & Marks, LLP  
1920 N Street, N.W., Suite 300  
Washington, D.C. 20036

**Proposal:** Allot Channel 300C1 at Idaho Falls, Idaho, as the community's six local commercial FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Idaho Falls, Idaho	241C, 256C1, 277C1 288C1, 296C1	241C, 256C1, 277C1 288C1, 296C1, 300C1

**Coordinates:** 43-39-59 NL and 112-00-06 WL

**Additional Information:** This allotment requires a site restriction of 19.6 kilometers (12.2 miles) north to avoid a short-spacing to the licensed and construction permit site for Station KUDD(FM), Channel 300C, Roy, Utah.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

**C. MB Docket No. 02-290; RM-10527**

**Petitioner:** Rural Pima Broadcasting

c/o Scott C. Cinnamon  
1090 Vermont Ave., Suite. 800  
Washington, D.C. 20005

**Proposal:** Allot Channel 249A at Manila, Utah, as the community's first local aural transmission service.<sup>2</sup>

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<sup>2</sup> In support of its proposal, petitioner states that Manila is the county seat for Daggett County and has a 2000 U.S. Census population of 308 persons. Manila has its own post office and zip code (84046). The town is run by a mayor and city council. It has its own airport and fire department, water and sewer services. Manila is the home to the U.S. Forest Service headquarters for the Flaming Gorge National Recreation Area. Petitioner also states that several businesses and churches are located in Manila.

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Manila, Utah	---	249A

**Coordinates:** 40-59-17 NL and 109-43-19 WL

**Additional Information:** This allotment is located at city reference coordinates and does not require a site restriction.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

**D. MB Docket No. 02-291; RM-10528**

**Petitioner:** Arthur Radio Broadcasting

c/o John M. Pelkey, Esq.  
Garvey, Schubert & Barer  
1000 Potomac Street, N.W., 5<sup>th</sup> Floor  
Washington, D.C. 20007

**Proposal:** Allot Channel 300C1 at Arthur, Nebraska, as the community's first local aural transmission service.<sup>3</sup>

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Arthur, Nebraska	---	300C1

**Coordinates:** 41-37-10 NL and 101-45-57 WL

**Additional Information:** This allotment requires a site restriction of 8.0 kilometers (5.0 miles) northwest to avoid the vacant allotment site for Channel 297C1 at Hershey, Nebraska.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

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<sup>3</sup> In support of its proposal, petitioner states that Arthur is an incorporated village with a 2000 U.S. Census population of 145 persons. Arthur is the county seat of Arthur County which has a population of 444 persons. Arthur has its own post office and zip code (69121). The Arthur County Clerk and the Arthur County Sheriff's offices are maintained in the village. Arthur hosts both the Arthur County Court and the State of Nebraska's 13th District Court. Arthur has its own newspaper, *The Arthur Enterprise*, and is home to the Arthur County High School. It is also the home of two significant tourist attractions—the Courthouse Museum and the Haybale Church.

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**E. MB Docket No. 02-292; RM-10540**

**Petitioner:** Mr. Robert Fabian  
4 Hickory Crossing Lane  
Argyle, Texas 76226

**Proposal:** Allot Channel 267C3 at McLean Texas, as the community's first local aural transmission service.<sup>4</sup>

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McLean, Texas	---	267C3

**Coordinates:** 35-05-01 NL and 100-44-58 WL

**Additional Information:** This allotment requires a site restriction of 21.4 kilometers (13.3 miles) southwest to avoid a short-spacing to the licensed site of Station KNOX(FM), Channel 266C, Woodward, Oklahoma.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

**F. MB Docket No. 02-293; RM-10541**

**Petitioner:** Maurice Salsa  
5615 Evergreen Valley Drive  
Kingwood, Texas 77345

**Proposal:** Allot Channel 280C2 at Wheeler, Texas, as the community's first local aural transmission service.<sup>5</sup>

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<sup>4</sup> Petitioner originally requested the allotment of 279C3 at McLean, Texas. However, we are, with petitioner's consent, proposing the allotment of alternate channel 267C3 because of a conflict with a petition filed on the same date. In support of his proposal, petitioner states that McLean is an incorporated city with a population in excess of 828 persons (the 2000 U.S. Census population is 830 persons). McLean has its own mayor, school system, post office, fire department and a number of local churches.

<sup>5</sup> In support of his proposal, petitioner states that Wheeler is an incorporated community with a 1998 population of 1,339 persons (the 2000 U.S. Census population is 1,378 persons). Wheeler is the county seat of Wheeler County. It has its own mayor, post office, volunteer fire department, school district, city hall and a number of local churches.

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Wheeler, Texas	--	280C2

**Coordinates:** 35-28-55 NL and 100-12-56 WL

**Additional Information:** This allotment requires a site restriction of 6.7 kilometers (4.1 miles) northeast to avoid short-spacings to the licensed sites of Station KKYN-FM, Channel 280C2, Plainview, Texas and Station KHYM(FM), Channel 280C1, Copeland, Kansas.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

**G. MB Docket No. 02-294; RM-10543**

**Petitioner:** Black Diamond Broadcasting

c/o Scott C. Cinnamon  
1090 Vermont Ave., Suite 800  
Washington, D.C. 20005

**Proposal:** Allot Channel 263A at Opal, Wyoming, as the community's first local aural transmission service.<sup>6</sup>

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Opal, Wyoming	---	263A

**Coordinates:** 41-46-16 NL and 110-14-50 WL

**Additional Information:** This allotment requires a site restriction of 6.3 kilometers (3.9 miles) east to avoid a short-spacing to the licensed site of Station KSFI(FM), Channel 262C, Salt Lake City, Utah.

**FCC Contact:** Sharon P. McDonald, (202) 418-2180.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by

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<sup>6</sup> In support of its proposal, petitioner states that Opal has a 2000 U.S. Census population of 102 persons. Opal has its own post office and zip code (83124). Petitioner also states that Opal has several businesses.

reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **November 18, 2002**, and reply comments on or before **December 3, 2002**, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>7</sup>

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the

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<sup>7</sup> See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules 46 FR 11549 (February 9, 1981).

Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Mass Media Bureau



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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall

be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.